

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant

9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
13 Against:

Case No. 2012-664

14 **MELISSA BLANCHE RAY**

STATEMENT OF ISSUES

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Interim Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about October 31, 2011, the Board of Registered Nursing, Department of
23 Consumer Affairs received an application for a Registered Nurse License from Melissa Blanche
24 Ray, also known as Melissa Deck (Respondent). On or about October 25, 2011, Melissa Blanche
25 Ray certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application. The Board denied the application on December 19, 2011.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3)(A) Done any act that if done by a licentiate of the business or profession in
2 question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the crime
4 or act is substantially related to the qualifications, functions, or duties of the business
5 or profession for which application is made.

6 (b) Notwithstanding any other provision of this code, no person shall be denied
7 a license solely on the basis that he or she has been convicted of a felony if he or she
8 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
9 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
10 convicted of a misdemeanor if he or she has met all applicable requirements of the
11 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
12 person when considering the denial of a license under subdivision (a) of Section 482.

13 (c) A board may deny a license regulated by this code on the ground that the
14 applicant knowingly made a false statement of fact required to be revealed in the
15 application for the license.

16 7. Section 492 of the Code states:

17 Notwithstanding any other provision of law, successful completion of any
18 diversion program under the Penal Code, or successful completion of an alcohol and
19 drug problem assessment program under Article 5 (commencing with section
20 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
21 agency established under Division 2 ([Healing Arts] commencing with Section 500)
22 of this code, or any initiative act referred to in that division, from taking disciplinary
23 action against a licensee or from denying a license for professional misconduct,
24 notwithstanding that evidence of that misconduct may be recorded in a record
25 pertaining to an arrest.

26 This section shall not be construed to apply to any drug diversion program
27 operated by any agency established under Division 2 (commencing with Section 500)
28 of this code, or any initiative act referred to in that division.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a
board within the department pursuant to law to deny an application for a license or to
suspend or revoke a license or otherwise take disciplinary action against a person who
holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

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1 9. Section 2761 of the Code states:

2 The board may take disciplinary action against a certified or licensed nurse or
3 deny an application for a certificate or license for any of the following:

4 (a) Unprofessional conduct, which includes, but is not limited to, the
5 following:

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7 (f) Conviction of a felony or of any offense substantially related to the
8 qualifications, functions, and duties of a registered nurse, in which event the record of
9 the conviction shall be conclusive evidence thereof.

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11 10. Section 2762 of the Code states:

12 In addition to other acts constituting unprofessional conduct within the meaning
13 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
14 licensed under this chapter to do any of the following:

15 (a) Obtain or possess in violation of law, or prescribe, or except as directed by
16 a licensed physician and surgeon, dentist, or podiatrist administer to himself or
17 herself, or furnish or administer to another, any controlled substance as defined in
18 Division 10 (commencing with Section 11000) of the Health and Safety Code or any
19 dangerous drug or dangerous device as defined in Section 4022.

20 (b) Use any controlled substance as defined in Division 10 (commencing with
21 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
22 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
23 dangerous or injurious to himself or herself, any other person, or the public or to the
24 extent that such use impairs his or her ability to conduct with safety to the public the
25 practice authorized by his or her license.

26 (c) Be convicted of a criminal offense involving the prescription, consumption,
27 or self-administration of any of the substances described in subdivisions (a) and (b) of
28 this section, or the possession of, or falsification of a record pertaining to, the
29 substances described in subdivision (a) of this section, in which event the record of
30 the conviction is conclusive evidence thereof.

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32 11. Section 2765 of the Code states:

33 A plea or verdict of guilty or a conviction following a plea of nolo contendere
34 made to a charge substantially related to the qualifications, functions and duties of a
35 registered nurse is deemed to be a conviction within the meaning of this article. The
36 board may order the license or certificate suspended or revoked, or may decline to
37 issue a license or certificate, when the time for appeal has elapsed, or the judgment of
38 conviction has been affirmed on appeal or when an order granting probation is made
39 suspending the imposition of sentence, irrespective of a subsequent order under the
40 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his

1 or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
2 guilty, or dismissing the accusation, information or indictment.

3 REGULATORY PROVISIONS

4 12. California Code of Regulations, title 16, section 1444, states:

5 A conviction or act shall be considered to be substantially related to the
6 qualifications, functions or duties of a registered nurse if to a substantial degree it
7 evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

8 (a) Assaultive or abusive conduct including, but not limited to, those violations
9 listed in subdivision (d) of Penal Code Section 11160.

10 (b) Failure to comply with any mandatory reporting requirements.

11 (c) Theft, dishonesty, fraud, or deceit.

12 (d) Any conviction or act subject to an order of registration pursuant to Section
290 of the Penal Code.

13 13. California Code of Regulations, title 16, section 1445 states:

14 (a) When considering the denial of a license under Section 480 of the code,
15 the board, in evaluating the rehabilitation of the applicant and his/her present
eligibility for a license will consider the following criteria:

16 (1) The nature and severity of the act(s) or crime(s) under consideration as
17 grounds for denial.

18 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
19 under consideration as grounds for denial which also could be considered as grounds
for denial under Section 480 of the code.

20 (3) The time that has elapsed since commission of the act(s) or crime(s)
referred to in subdivision (1) or (2).

21 (4) The extent to which the applicant has complied with any terms of parole,
22 probation, restitution, or any other sanctions lawfully imposed against the applicant.

23 (5) Evidence, if any, of rehabilitation submitted by the applicant.

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25 DRUG

26 14. Methamphetamine is a Schedule II controlled substance as designated by Health and
27 Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business and
28 Professions Code section 4022.

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1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 **(Act if Done by a Licentiate – Illegal Use of a Controlled Substance)**

3 16. Respondent's application is subject to denial under sections 480, subdivision
4 (a)(3)(A) of the Code in that on or about July 26, 2006, as described in paragraph 15, above, she
5 used the controlled substance methamphetamine to an extent or in a manner dangerous or
6 injurious to herself. Such conduct would be a ground for discipline under section 2762,
7 subdivision (a) of the Code for a licensed registered nurse.

8 **THIRD CAUSE FOR DENIAL OF APPLICATION**

9 **(Act if Done by a Licentiate – Illegal Possession of a Controlled Substance)**

10 17. Respondent's application is subject to denial under section 480, subdivision
11 (a)(3)(A) of the Code in that Respondent possessed a controlled substance. Such conduct would
12 be a ground for discipline under section 2762, subdivision (b) of the Code for a licensed
13 registered nurse. The circumstances are as follows:

14 a. On or about the evening of October 22, 2005, patrol officers with San
15 Diego Police Department were dispatched to investigate suspicious activity involving Respondent
16 and a male companion. Upon contact with Respondent, she told the officers that she had smoked
17 methamphetamine early that morning. Respondent gave the officer consent to search her purse.
18 Inside the purse, the officer found a glass pipe with residue and burn marks, and a small metal
19 box containing a crystal rock determined to be methamphetamine. Respondent was arrested.

20 b. As a result of the arrest, on or about October 26, 2005, in a criminal
21 proceeding entitled *People of the State of California v. Melissa Blanche Ray*, in San Diego
22 County Superior Court, case number M974714, Respondent pled no contest to violating Health
23 and Safety Code section 11377, subdivision (a), possession of illegal drugs, a misdemeanor
24 pursuant to Penal Code section 17, subdivision (b)(4). The court dismissed an additional count of
25 violating Health and Safety Code section 11364, possession of drug paraphernalia.

26 c. On or about May 12, 2008, after Respondent successfully completed the
27 deferred entry of judgment program, the court set aside Respondent's plea and the charges were
28 dismissed pursuant to Penal Code section 1000.

1 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

2 **(March 19, 2007 Criminal Conviction for Possession of**

3 **Controlled Substance Paraphernalia on October 21, 2006)**

4 18. Respondent's application is subject to denial under sections 480, subdivisions (a)(1)
5 and (a)(3)(A) of the Code in that she was convicted of a crime that is substantially related to the
6 qualifications, functions, and duties of a registered nurse. The conviction would be a ground for
7 discipline under section 2761, subdivision (f) for a licensed registered nurse. The circumstances
8 are as follows:

9 a. On or about March 19, 2007, in a criminal proceeding entitled *People of*
10 *the State of California v. Melissa Blanche Ray*, in San Diego County Superior Court, case number
11 M006800, Respondent was convicted on her plea of no contest to violating Health and Safety
12 Code section 11364, possession of controlled substance paraphernalia, a misdemeanor.

13 b. As a result of the conviction, on or about March 19, 2007, Respondent was
14 granted three years summary probation, and ordered to pay fees and fines in the amount of \$774,
15 and comply with probation terms. On or about August 15, 2009, the court granted Respondent's
16 Petition for Relief, set aside the conviction, and dismissed the charges pursuant to Penal Code
17 section 1203.4.

18 c. The facts that led to the conviction are that on or about October 21, 2006,
19 Respondent was cited by the San Diego Police Department after she was found in possession of
20 narcotic paraphernalia.

21 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

22 **(Act if Done by a Licentiate – Drug-Related Criminal Convictions)**

23 19. Respondent's application is subject to denial under sections 480, subdivision
24 (a)(3)(A) of the Code in that Respondent was convicted of drug-related criminal offenses, as
25 described in paragraphs 15 and 18, above. Said convictions would be a ground for discipline
26 under section 2762, subdivision (c) of the Code for a licensed registered nurse.

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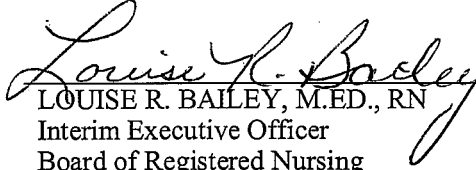
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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

- 4 1. Denying the application of Melissa Blanche Ray for a Registered Nurse License;
5 2. Taking such other and further action as deemed necessary and proper.
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8 DATED: April 27, 2012


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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